



ENFORCEMENT

2009 Compliance and Enforcement Report: A Cornerstone of Environmental Protection

MassDEP is the state agency responsible for ensuring clean air and water, the safe management of toxics and hazards, the recycling of solid and hazardous wastes, the timely cleanup of hazardous waste sites and spills, and the preservation of wetlands and coastal resources.

To achieve these goals, MassDEP employs a comprehensive, integrated *Compliance Assurance Strategy* focused on the achievement of environmental results. This strategy incorporates protective and innovative environmental standards and policies; effective compliance assistance and outreach efforts; timely and efficient permits; and robust compliance and enforcement efforts.

In FY09, MassDEP's *Compliance Assurance Strategy* continued to achieve our goal of environmental protection and, with the help of targeted inspections and innovative compliance and enforcement strategies, achieved impressive results.

This report provides an overview of key compliance and enforcement efforts and results from Fiscal Year 2009, including:

- *Compliance Assurance*: A look at how we best achieve compliance and environmental results.
- *FY09 Compliance and Enforcement Results*: a quantitative look at our enforcement in FY09.
- *Achieving Goals through Strategic C&E*: an overview of MassDEP's FY09 strategic compliance and enforcement goals, as well as significant cases and initiatives that helped us achieve these goals.

I. Compliance Assurance:

Our Compliance Assurance Strategy includes a number of tools to ensure environmental compliance, including protective and innovative permitting; compliance assessment and enforcement; technical assistance; and public education. The following is an example of how we put what we have learned into practice in Fiscal Year 2009. In the Hauler and Generator Initiative, MassDEP developed an integrated, tailored compliance assurance strategy to address a specific environmental performance issue, and utilized a number of enforcement strategies, ranging from technical assistance to enforcement.

Compliance Assurance Highlight: The Hauler and Generator Initiative

In 1990, the Massachusetts Department of Environmental Protection (MassDEP) introduced its first bans on landfilling and combustion of easy-to-recycle and toxic material, such as recyclable paper and cardboard, lead acid batteries, white goods and whole tires. “Waste bans” are restrictions on the disposal, transfer for disposal, and contracting for disposal of certain hazardous and recyclable items at solid waste facilities in Massachusetts.

The waste bans are designed to:

- Conserve capacity at existing disposal facilities.
- Minimize the need for new facility construction.
- Provide recycling markets with large volumes of material on a consistent basis.
- Prevent certain toxic substances or materials from adversely affecting our environment when landfilled or incinerated.
- Promote business and residential recycling efforts.

“Generators and Haulers” are the people who generate solid waste and the people who transport solid waste to disposal facilities. Each is subject to waste ban requirements.

Over the past few years, MassDEP has implemented a comprehensive compliance assurance strategy, utilizing a number of different “tools” to achieve compliance with waste bans. These tools include outreach and technical assistance, increased compliance assessment, enforcement, and evaluation of future compliance assurance strategies.

Outreach and Technical Assistance: In early phases of implementation of the waste ban, MassDEP focused compliance assurance resources on the provision of outreach and technical assistance to haulers and generators, and on efforts to support development of a new collection infrastructure and recycling markets.

Increased Compliance Assessment: In recent years, based on results of inspections at solid waste facilities, plateauing recycling rates, and concerns expressed by stakeholders and citizens, MassDEP became increasingly aware of compliance issues relative to haulers and generators. In FY09, MassDEP developed a new compliance assurance strategy, with an emphasis on increased waste ban compliance assessment efforts, intended to:

- Increase diversion of all waste ban materials through increased DEP presence and enforcement of all banned materials on haulers and generators of solid waste
- Create a culture change with haulers on their interactions with their customers that supports compliance with waste bans.
- Assess compliance performance and collect baseline statistics to help develop and evaluate future compliance assurance strategies.

Beginning in January of 2009, MassDEP inspectors inspected the 10 largest solid waste facilities for hauler and generator compliance with the waste bans, observing 1,358 loads of waste. While all loads included at least some banned materials, inspectors determined that 263 loads were failed loads, resulting in a **19.4% waste ban failure rate** for haulers and generators of solid waste.

Enforcement: In follow-up to the inspections, a review of these 263 failed loads revealed that approximately 50% of these failed for the presence of a relatively small quantity of restricted materials. MassDEP targeted the most egregious violations for enforcement, and issued Notices of Noncompliance to 78 businesses or generators and 23 waste haulers. Businesses that receive a notice of non-compliance are required to respond to MassDEP with their plan of action to stop the disposal of banned materials.

Evaluating Future Compliance Assurance Strategies: Increased inspection and enforcement activity, like MassDEP's Hauler and Generator Initiative, send a clear message—compliance with these important recycling regulations is mandatory, and MassDEP will aggressively enforce them.

In addition, this initiative provided valuable information about compliance performance and how to ensure improved compliance in the future. Based on the results of this initiative, MassDEP opened new discussions with the hauler industry to discuss potential regulatory changes to better facilitate compliance and accountability by haulers and their customers, the generators.



A load clearly violating the waste ban for cardboard.

II. Fiscal Year 2009 Compliance and Enforcement Results

The cornerstone of any effective compliance assurance strategy is a robust compliance and enforcement program that maintains a highly visible presence in the regulated community, includes the issuance of timely and appropriate penalties, and takes other enforcement actions against environmental scofflaws. The goal is to deter current and would-be rule-breakers by finding violators, making those violators return to compliance, restore any damage caused, and pay a penalty that exceeds the economic benefit of non-compliance.

Measuring the performance of our compliance assurance strategy includes an evaluation of both the number and type of activities that MassDEP conducts. Output accounting offers one perspective on compliance and enforcement efforts' strategic contribution to an integrated problem solving strategy. Output accounting can also help inform the public of the focus and results of DEP's compliance and enforcement resource allocation, quantifying the level of the Department's field presence and illustrating how the agency's compliance inspection and monitoring translates into enforcement actions. Output accounting also illustrates the cost to violators of significant non-compliance. Such output measurements also help instill the credibility that regulatory limits and permit conditions designed to protect public health and the environment are being enforced.

The key output performance areas DEP measures are:

- Total number of inspections conducted;
- Total Number of Enforcement Actions (Including Lower Level Enforcement (LLE) actions taken and Higher Level Enforcement (HLE) actions taken);
- Monetary amount of administrative and judicial penalties assessed and collected.
- Alternative Compliance and Enforcement Measures

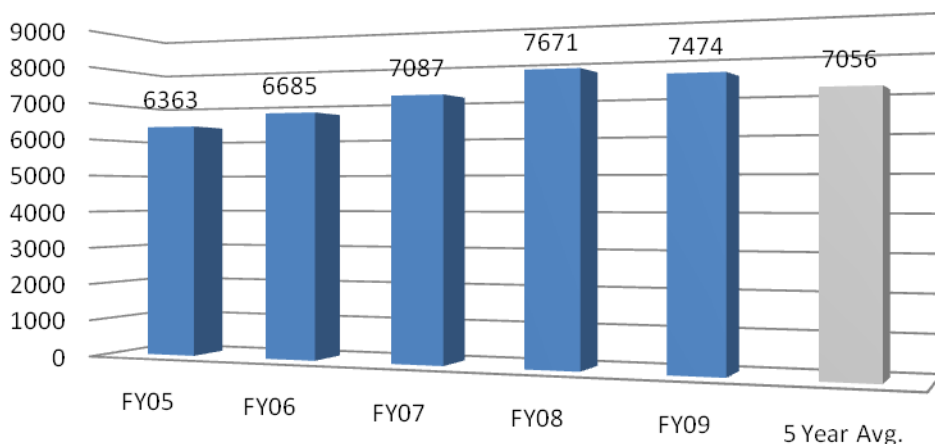
Measuring Our Enforcement Presence—Inspections

One important goal for our compliance and enforcement efforts is to maintain a robust enforcement presence – to be the “cop on the beat.” A good measurement of our presence is the number of inspections we perform.

The traditional inspection, a physical visit to review a regulated site's or facility's compliance status, remains the mainstay of DEP's compliance assessment program. As noted above, inspections are conducted for a variety of reasons, such as: planned as part of a program's standard compliance assurance targeting of a sector; program-specific follow-up at a facility that has been the subject of a prior compliance assurance inspection; or an investigation in response to citizen complaints.

As shown in this chart, in FY09 MassDEP performed **7474 inspections, a level of inspections that greatly exceeds the 5 years average (7056)**. This demonstrates that despite the resource constraints that began to impact MassDEP in FY09, we continued to maintain a robust C&E presence.

Inspections -- FY05-09



FY2009 Enforcement Actions

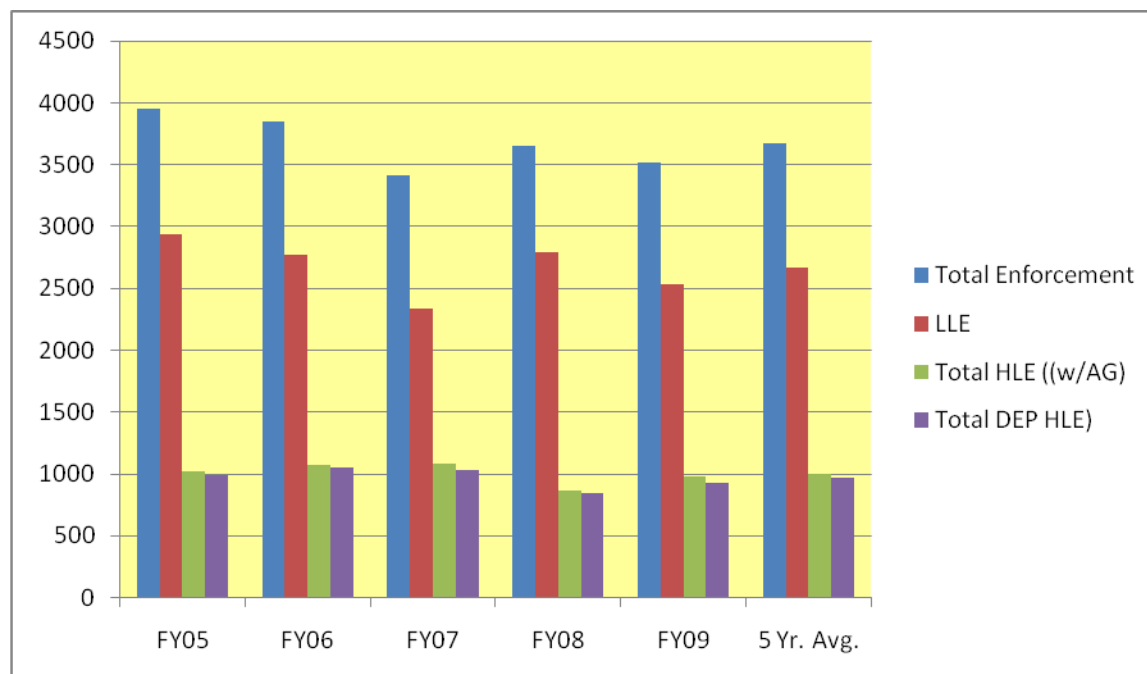
While inspections can be utilized for a number of strategic goals, a primary goal is to discover noncompliance. MassDEP is committed to undertaking timely and appropriate enforcement in such instances, in order to:

- ensure that the violator takes necessary steps to address any environmental impacts and return to compliance;
- promote compliance with regulations by sending a strong deterrence message, including demonstrating that noncompliance is substantially more costly than compliance; and
- capitalize on opportunities to induce violators to and go beyond compliance.

In Fiscal Year 2009, MassDEP continued a robust enforcement program, undertaking a level of enforcement activity consistent with recent trends. Specifically, MassDEP's compliance enforcement efforts have resulted in significant outputs, including Lower Level Enforcement, Higher Level Enforcement, and Penalties.

| Enforcement Actions | FY05 | FY06 | FY07 | FY08 | FY09 | 5 Yr Ave |
|--|-------------|-------------|-------------|-------------|-------------|-----------------|
| Lower Level Enforcement LLE (NONs) | 2934 | 2771 | 2333 | 2791 | 2537 | 2673 |
| Higher Level Enforcement | 992 | 1050 | 1029 | 844 | 932 | 969 |
| HLE including AG/EPA Referrals/Settlements | 1023 | 1073 | 1079 | 862 | 978 | 1003 |
| Total Enforcement Actions | 3957 | 3844 | 3412 | 3653 | 3521 | 3676 |

Enforcement Actions--FY05--FY09



Lower level enforcement (LLE): Lower level enforcement actions include a variety of “Notices of Noncompliance” (NONs), which are generally used to require correction of minor compliance problems, provide notice that an existing practice is unacceptable, and/or take the first step before issuing administrative orders and penalties if problems are not corrected. In FY09, MassDEP issued 2537 LLEs, a slight decrease from FY08, but generally consistent with the 5-year average.

Higher level enforcement (HLE): HLE includes the range of enforcement actions generally utilized for more serious violations and includes actions such as administrative consent orders with or without a penalty (ACO(P), penalty assessments (PAN), permit and licensure sanctions (e.g. suspensions or revocations) and referral to the Attorney General or the Environmental Protection Agency. In FY09, MassDEP issued 932 HLE, a figure generally consistent with 5 year average, and a marked increase from the previous year (10.4%).

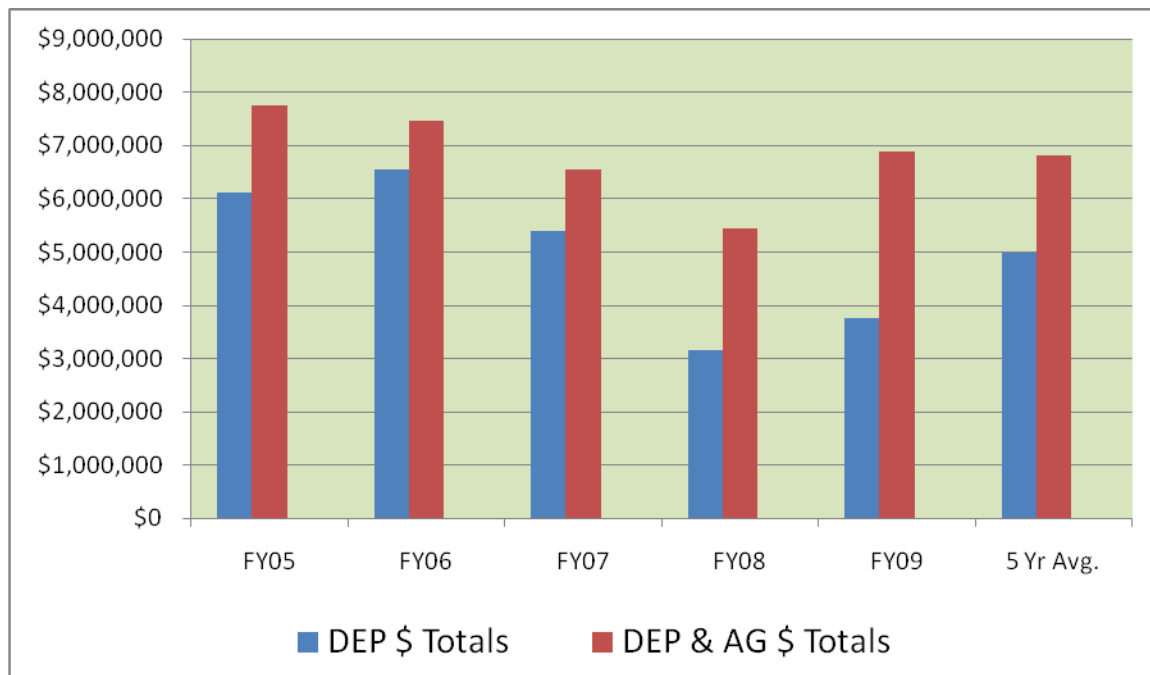
Penalties and Fines

The assessment of monetary penalties is an important element of a credible enforcement program. Assessment of penalties creates a deterrent effect by exacting a price for noncompliance beyond the expenditures required to return to compliance and remediate any damage caused. In appropriate cases, a penalty reflects the economic benefit a violator obtains by avoiding or deferring compliance related costs or investments. Effective use of penalties and fines sends a strong message to the regulated community – avoiding compliance with environmental regulation will not provide an economic advantage, and in fact will be more costly.

In FY09, MassDEP assessed approximately \$3.77 million through MassDEP administrative enforcement (actions taken by MassDEP independently). Actions initiated by MassDEP and pursued by MassDEP jointly with the Attorney General’s Office resulted in an additional **\$3.1 million**, for a total of nearly **\$6.9**

million in penalties assessed through environmental enforcement action. This represents an increase of almost **27% over FY08** and is consistent with the 5-year average for total penalties assessed.

Penalties Assessed--FY05--FY09



While MassDEP administrative penalties also increased from FY08 (19%), the total remains below the 5-year average. Lower administrative numbers can be attributed to a number of potential factors, including:

- lower average penalty assessments per penalty cases: Penalty assessments for cases involving penalties were 12.4% lower in FY09 than 5-year average.
- substantially reduced average penalty assessments for unilateral penalties: In FY09, average unilateral penalty assessments were 41% lower than the 5-year average. This reflects both fewer cases triggering need to impose large unilateral penalties, and MassDEP's strategic use of smaller penalties in certain sectors to increase compliance and provide a level playing field.
- The expenditure of significant enforcement resources on completing complex, high profile cases in coordination with the Attorney General's office (penalty assessments for these cases are not reflected in MassDEP administrative penalty numbers).

MassDEP Penalty Assessments--FY05-FY09

| | FY05 | FY06 | FY07 | FY08 | FY09 | 5 Yr Ave |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| Administrative (ACOP total) | \$3,599,550 | \$3,994,673 | \$3,455,983 | \$2,375,063 | \$2,570,698 | \$3,199,194 |
| PAN \$ (as of FY99) | \$2,297,542 | \$2,000,845 | \$1,562,112 | \$641,890 | \$997,456 | \$1,499,969 |
| Stipulated+ Suspended Penalties \$ (as of FY03) | \$213,480 | \$556,718 | \$373,120 | \$151,600 | \$202,275 | \$299,439 |
| DEP \$ Totals | \$6,110,572 | \$6,552,236 | \$5,391,216 | \$3,168,553 | \$3,770,429 | \$4,998,601 |
| AG Civil/Crim \$ Totals | \$1,639,275 | \$912,391 | \$1,167,500 | \$2,277,000 | \$3,127,000 | \$1,824,633 |
| DEP & AG \$ Totals | \$7,749,847 | \$7,464,627 | \$6,558,716 | \$5,445,553 | \$6,897,429 | \$6,823,234 |

Beyond “Outputs”— Alternative Compliance and Enforcement Measures

MassDEP continues to work to quantify the non-traditional measures of success that result directly from enforcement actions. These measures, combined with traditional measures such as penalty dollars and compliance rates, provide a more three-dimensional view of MassDEP’s work. In 2009, our enforcement actions yielded important environmental benefits, including reduced ozone emissions, reduced asbestos particles released to the air, proper cleanup of contaminated soils, and protected drinking water for Massachusetts citizens.

To give just a “snapshot” of some of these benefits, we estimate that our enforcement actions resulted in:

Restoration and Cleanup of Environment

- Cleanup of **27,200 gallons** of chemicals released to the environment (petroleum and/or hazardous materials);
- Treatment of **585,000 gallons** of contaminated groundwater;
- Removal and proper management of **70,750 cubic yards** of contaminated soils;
- Removal of **72,000 pounds** of illegally disposed solid waste, preventing contamination of soil and ground water; and
- Restoration of approximately **14.2 acres of wetland resource areas**, including **590,209** square feet of wetlands; **11,449** square feet of land under water; **16,581** square feet of riverfront area; and 3,425 linear feet of bank across the state.

Pollution Prevention/Public Health Protection

- Reduction from the ambient air of **322,000 pounds** of ozone precursors, particulate matter, carbon monoxide, sulfur dioxide and toxic compounds;
- Drinking Water – approximately **543,000 people** served by **87 public water systems** (PWSs) will benefit from mandatory improvements that ensure they will receive water that is safe and fit to drink; and
- Improved **management** of **5,967,000 million cubic feet** of landfill space and solid waste.

III. Achieving Environmental Goals through Strategic Compliance and Enforcement

In addition to considering traditional enforcement metrics, MassDEP works to better track, evaluate, and communicate other measures of success for compliance assurance activities. As we take steps to improve our strategic environmental compliance assurance efforts and fully integrate compliance and enforcement activities, we also need to ensure that we effectively evaluate and communicate the success of these efforts.

In undertaking compliance assessment activities in FY09, MassDEP focused on a number of priorities, including:

- *Environmental Results*
- *Compliance Assessment and Verification*
- *Leveraging Environmental Goals through Partnerships*

The following examples illustrate how MassDEP has achieved these strategic goals through compliance and enforcement initiatives and cases.

Environmental Results

A major goal in the design and implementation of compliance and enforcement strategies is the achievement of tangible environmental results. In many cases, we implement certain initiatives and strategies designed to achieve specific environmental goals. Some examples of these strategies in FY09 include: our ongoing Wetlands Loss enforcement initiative; a collaborative compliance effort intended to improve water quality at White Island Pond; and the strategic utilization of Supplemental Environmental Projects (SEP), which are individually tailored at the micro-level, aimed at specific environmental goals for specific projects.

5 years of Success — Massachusetts Wetlands Loss Initiative

Wetlands are valuable natural resources found throughout Massachusetts, from the Atlantic coast to the Berkshires. Wetlands help clean drinking water supplies, prevent flooding and storm damage, and support a variety of wildlife. When wetlands are filled or altered, these valuable functions can be impaired.

Well over half of all wetlands loss in Massachusetts occurs as a result of illegal wetlands filling. Five years ago MassDEP targeted this problem and developed the “Wetlands Loss Initiative,” an innovative aerial surveillance program where MassDEP staff analyze “before” and “after” aerial photographs to identify and prioritize wetlands enforcement based on impact and science.

This Initiative has become an established and critical aspect of MassDEP’s efforts to protect wetlands resources. Since its inception, MassDEP has executed 61 wetlands loss cases. These 61 cases will result in restoration of more than 60 acres of wetlands resource areas. MassDEP levied over \$2.6 million in penalties for these cases, including approximately \$600,000 in suspended penalties (see chart on next page)

Enforcement cases identified through aerial imagery program

| Date | # Wetlands Loss Cases | Penalties* | Acres Restored |
|------------------|------------------------------|-------------------|-----------------------|
| 7/1/03- 6/30/04 | 10 | \$ 650,750 | 23.52 |
| 7/1/04 - 6/30/05 | 12 | \$1,104,100 | 21.41 |
| 7/1/05 - 6/30/06 | 8 | \$ 102,500 | 3.35 |
| 7/1/06- 6/30/07 | 12 | \$ 186,500 | 5.68 |
| 7/1/07 – 6/30/08 | 9 | \$ 104,225 | 1.87 |
| 7/1/08 – 6/30/09 | 10 | \$ 492,082 | 4.49 |
| | | | |
| TOTALS | 61 | \$2,640,157* | 60.32 acres |

* Includes \$612,942 in suspended penalties, \$212,000 in SEPs, and additional SEPs with as-yet undetermined value.

FY09 Wetlands Loss Case: Brandywine Corporation: In FY 2009, MassDEP worked closely with the Attorney General’s Office to reach a settlement in a significant wetlands enforcement case against the Brandywine Corporation. This case involved the unpermitted alteration of 5 acres of wetlands on a parcel in Billerica used for automobile auctions. The settlement required the owner to restore a portion of the altered wetlands, pay \$200,000 towards additional wetlands enhancement in the Concord River Watershed, and pay a \$50,000 penalty, plus \$50,000 upon failure to complete the agreed-upon restoration.

Successful Wetlands Restoration – 201 Concord Road in Carlisle: These photos graphically demonstrate the environmental benefits of the Wetlands Loss initiative. A MassDEP investigation found that the property owners had constructed a large pond, altering nearly an acre of Bordering Vegetated Wetland (BVW) and 460 linear feet of an intermittent stream. The aerial photograph shows the area of alteration (yellow crosshatch), and the following photo shows the pond and surrounding grassy, filled wetland area. After successful negotiation with the property owner, a large restoration project was performed on the site in 2009 that included: ongoing maintenance of a small pond to provide for fire protection; enhancement of the wildlife habitat values of the pond; excavation of fill and recreation of 12,369 square feet of Red Maple swamp, 14,370 square feet of wet meadow, and 3,408 square feet of shrub swamp; and removal of culverts for restoration of a meandering stream channel. This case was settled through execution of an Administrative Consent Order that included a penalty of \$25,755 paid, plus an additional \$25,755 suspended upon full compliance.



The aerial photograph shows the area of alteration (yellow crosshatch), where property owners installed a large pond and altered wetlands.



Before: pond and surrounding grassy, filled wetland area.



After: Large restoration includes enhanced wildlife habitats, wet meadow, swamp and restoration of a stream

White Island Pond—A Collaborative Compliance Approach

While MassDEP's enforcement efforts can yield impressive environmental results, we do not always rely on enforcement. Compliance with environmental standards can be obtained through collaborative efforts with regulated parties and other agencies to meet environmental goals. Efforts in 2009 to improve water quality at White Island Pond provide a good illustration of such productive collaboration.

White Island Pond is a 291-acre pond located in Plymouth and Wareham. The pond has a long history of nutrient-related impairment which has resulted in algal blooms, including blooms of toxic blue-green cyanobacteria (as shown in photo). In 2009, MassDEP developed a Total Maximum Daily Load for the pond. The TMDL is essentially a "pollution budget" designed to restore the health of an impaired waterbody.

The TMDL report outlined proposed controls to address excessive algae and weeds. These growths impair aquatic life and recreational uses in White Island Pond such as swimming. The report focused on phosphorus inputs from commercial cranberry bogs, as well as phosphorus from homes. MassDEP estimated that the TMDL will require comprehensive actions for reducing watershed sources of total phosphorus by up to 73 percent to meet the TMDL target concentration in the pond.

Recognizing the likely contribution from bog operations, MassDEP initiated discussions with the owners of two bogs that contribute to the pond's nutrient load. A.D. Makepeace Company cultivates approximately 42 acres on the northwest side of the pond and Federal Furnace Cranberry Company cultivates approximately 47 acres on the northeast side of the pond. The TMDL provided documentation for the two companies that additional management practices at the bogs are required to reach the goals of the TMDL.



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Achieving Results through Supplemental Environmental Projects

“Supplemental Environmental Projects” (SEP) are another tool by which MassDEP achieves maximum environmental benefit through enforcement efforts. SEPs are used as part of negotiated settlements of enforcement matters. A SEP is a project that may be proposed in lieu of a portion of a penalty, and that benefits public health, safety and welfare, and the environment. Where possible, MassDEP seeks to have the environmental benefit of a SEP significantly outweigh the benefit that would be derived from a cash penalty alone and, where possible, go beyond compliance.

SEPs can also provide opportunities to support MassDEP’s specific environmental goals. For example, water conservation efforts have taken on increasing importance in recent years, as demonstrated by 2006 amendments to the Toxics Use Reduction Act (TURA) that allowed companies to develop Resource Conservation Plans (addressing water, energy, or solid waste) in addition to traditional Toxics Use Reduction Plans. In 2009, as part of our ongoing enforcement of the TURA program (in which certain companies must report and seek ways to reduce their toxics use), MassDEP was able to work with two companies that had failed to file their annual toxics use reports on time, and obtained commitments from those companies to go beyond compliance and achieve important, ongoing environmental improvements, including water conservation.

Superior Printing Inc. of Marlborough agreed to implement a \$98,000 closed-loop non-contact cooling-water recycling system that will save between 3.5 million and 8.3 million gallons of water per year (MassDEP agreed to waive all but \$9,857 of the \$37,607 penalty proposed for the violation).

Coca-Cola Bottling of New England agreed to implement a three-part, \$16,857 water conservation project to reduce water use through recovery and recycling of wastewater. The company has reported saving over 4.6 million gallons annually, with a projected energy savings of 410,000,000 BTUs annually (the company also paid a \$13,043 fine).

Compliance Assessment

Compliance assessment initiatives are intended to assess how a sector or group of sources is performing, or the effectiveness of a particular compliance assurance strategy. An example of MassDEP’s Compliance Assessment in Fiscal Year 2009 initiatives was our assessment of the Environmental Results Program.

Checking Business Performance under the ERP Program

The Environmental Results Program (ERP) is a unique environmental performance initiative developed by MassDEP. ERP features a multimedia, sector-based regulatory approach that replaces facility-specific state permits with industry-wide environmental performance standards and annual certifications of compliance. ERP has been particularly helpful in addressing compliance assurance at smaller firms. Smaller firms may not individually emit significant pollution, but collectively can have environmental impacts equivalent to several larger sources.

ERP applies three innovative tools to enhance and measure environmental performance. These tools supplement MassDEP’s traditional compliance inspection and compliance assistance efforts:

- An annual self-certification of compliance by companies to increase self-evaluation and accountability;
- Compliance assistance from the agency through outreach and innovative workbooks; and
- A new performance measurement methodology to track results, determine priorities, and strategically target inspections and compliance assistance efforts.

ERP has proven to be very successful, bringing hundreds of small businesses into compliance with applicable environmental regulations. To ensure the continued effectiveness of the program, MassDEP performs a periodic compliance verification using random inspections and statistical analysis to measure the performance of ERP sectors and facilities. This methodology validates the performance of regulated businesses and the program itself, and is used to target facilities for inspections and compliance assistance. The evaluation tracks a number of sector-specific performance measures called “Environmental Business Practice Indicators” that provide “snapshots” of the sector’s environmental performance before and after certification and on a long-term basis.

In FY09, MassDEP completed its most recent performances analysis for two of the sectors where ERP is applied: Printers and Dry Cleaners. Inspections were performed at a sufficient number of randomly selected ERP Printers and ERP Dry Cleaners to allow statistical techniques to estimate the performance of the entire sector from the results of the inspections, with a high degree of certainty. Key findings include:

Achievement Rate on Environmental Business Practice Indicators: The achievement rate is the percentage of facilities that “achieved” the Environmental Business Practice Indicators (EBPI’s), which are the most significant regulatory and beyond compliance measures that are tracked through ERP.

For both sectors, the achievement rate measure was above or very nearly above 80%, meaning the facilities were doing the “right thing” over 80% of the time. This is consistent with previous compliance assessments, although there were statistically significant declines in each sector for some specific indicators. For example, both sectors showed declines in indicators related to proper hazardous-waste labeling and storage requirements.

Distribution of Facility Scores: In addition to looking at the performance of the entire universe of facilities, the performance of individual facilities was assessed through the calculation of a “facility score” for each facility. The facility score is the proportion of applicable indicators that the facility successfully achieved (complied with or implemented) multiplied by ten. For both sectors, out of a maximum score of 10, the average facility score was 8 or above for the EPBIs.

Comparison of Certifications and Inspector Findings: A key component of the ERP program is a requirement that facilities submit self-certified compliance reports. One purpose of the random inspections is to determine the reliability of the self certifications, a key component of the ERP program.

MassDEP found statistically significant differences between the achievement rates for specific indicators in each sector based on what was reported on the certifications versus what the inspectors found on their site visits. In both sectors, for example, facilities were statistically more likely to claim compliance with certain recordkeeping and hazardous-waste labeling requirements than were observed by the MassDEP inspectors.

Putting the Assessment Results to Work:

A key strategy of the ERP approach is to use performance data to strategically direct MassDEP resources to specific problem areas. Based on the finding of this assessment, the agency has already made or plans to make a number of adjustments to bring greater focus by the regulated

community on the identified areas of poorer compliance. Actions include changing the ERP Dry Cleaner compliance certification form to ask more specific questions about hazardous waste and recordkeeping requirements. MassDEP also plans to amend the ERP Printer compliance certification form in 2011 to both incorporate new program requirements and better address the problem areas identified by the assessment. Finally, a special Compliance Fact Sheet will be mailed to all ERP Dry Cleaners and Printers with the notices for the next round of compliance certification. The fact sheet information will also be posted on the eDEP web filing site so that facilities that file electronic compliance certifications are made aware of the particular areas of concern.

Leveraging Goals through Environmental Partnerships

Collaboration with other agencies, both state and federal, as well as with municipalities, is an excellent way to consolidate enforcement resources, target inspections and enforcement, and achieve impressive results. During difficult economic times, when state and local governments face significant budgetary and resource constraints, such partnerships are even more critical. MassDEP's work with its partners yielded significant enforcement and environmental results in Fiscal Year 2009.

MassDEP's Environmental Strike Force

The Environmental Strike Force (ESF) is a valuable resource at MassDEP. The ESF teams up DEP, the Environmental Police, and the Office of the Attorney General (OAG) to investigate and prosecute criminal and major civil environmental violations. Chartered in 1989 and headquartered at DEP, the ESF focuses on violations where there is a high risk to human health or sensitive resources, including illegal discharges/disposal of toxics or asbestos, and where there is knowing and intentional fraudulent activity designed to circumvent compliance. The importance of ESF's collaborative efforts is illustrated by several FY09 cases:

Stopping Illegal Discharges of Medical Waste — Associated Processor Service

In FY09 Ed Small of Dover, the former owner and operator of Associated Processor Service (APS), a medical waste disposal company in Natick, pleaded guilty in Middlesex Superior Court on several charges, including unlawful storage and disposal of medical waste, as well as unlawful dumping of hazardous waste, including mercury. Mr. Small plead guilty to violating the Hazardous Waste Management Act (7 counts), the Clean Water Act (2 counts), the State Sanitary Code (2 counts), and the Solid Waste Management Act (1 count). Mr. Small was sentenced to 18 months in the House of Correction, suspended for a probationary period of five years. Under the terms of the probation conditions, Small must pay \$50,000 into a trust set up by the Attorney General's office to pay for some of the cost of remediation of the former APS facility; for expenses related to the prosecution of this case; and for continued training and legal education in the area of environmental enforcement.

This matter first came to the attention of MassDEP in 2006 when the ESF learned from contacts in New York that Small had illegally disposed of red-bagged medical waste, including syringes and blood-contaminated gauze, in a dumpster that was hauled to an Auburn, New York landfill. A subsequent comprehensive investigation revealed that Small not only illegally stored medical waste at the facility, but that he illegally treated hazardous waste on-site and then discharged the waste water down the sink and into floor drains which discharged into the Massachusetts Water Resource Authority sewer system. ESF participated in a criminal search warrant of Small's storage facility, where incriminating materials were discovered, and partnered with MWRA TRAC investigators to trace the source and the trail of the illegal disposal.

The Fraudulent “Auto Inspection Sticker” Initiative

In addition to routine coordination with the Attorney General's Office, MassDEP's ESF works closely with other state and local agencies to develop initiatives and cases that protect the public health, safety, and the environment. One example of such collaboration is the Fraudulent Sticker Initiative, where the ESF partnered with the Registry of Motor Vehicles, the Attorney General, and local and state police.

The Massachusetts automobile emissions test is designed to ensure that vehicles run as cleanly as they were designed to run, which in turn protects the air we breathe. On October 1, 2008, MassDEP and the RMV rolled out the “next generation” Vehicle Emission Test and Safety Inspection Program. Most automobiles in Massachusetts (model year 1996 and new) receive an annual on-board diagnostic (OBD) emissions test. The OBD test is a simple test in which an inspector plugs the scan tool from an inspection workstation into a vehicle's OBD connector, and the workstation's computer queries the vehicle's computer for the status of the emissions control system monitors.

The new program enables MassDEP and the Registry of Motor Vehicles to better detect any fraudulent emissions inspections and to take the appropriate enforcement action. In Fiscal Year 2009, ESF investigators conducted a series of comprehensive inspections of suspect stations across the Greater Boston area. Some of these investigations involved local and state police. To date, this effort has resulted in over 20 cases and numerous ongoing investigations. ESF has partnered with the Registry of Motor Vehicles to ensure that license revocation and suspension is conducted in tandem with Attorney General or MassDEP enforcement. Fines have ranged from \$6,000 to \$30,000.

One notable case in FY09 involved Dorchester Auto Service, Inc. In April 2009, the Attorney General's Office reached a settlement agreement with Dorchester Auto and an inspector who was employed by the station. The settlement resolved allegations that the defendants were responsible for conducting at least 72 illegal emission inspections. The investigation showed that rather than conducting an OBD test on motor vehicles being inspected, Dorchester Auto tested a “clean” vehicle,

one that they knew would pass the test, and then used the results from that test to issue a passing inspection sticker to the vehicle that came in for the inspection. This illegal practice is known as “clean scanning.”

Under the terms of the settlement, Dorchester Auto agreed to a \$144,000 penalty and a six-month suspension of its inspection station license. The license of the inspector employed at the station who allegedly conducted the fraudulent inspections was revoked as part of the settlement agreement.

Mantrose-Haeuser and Zinsser Co.—Second Largest Environmental Protection Settlement in Massachusetts History

In October 2008, MassDEP and the Attorney General’s office approved a landmark settlement agreement with Mantrose-Haeuser Co, Inc. and Zinsser Co., Inc. concerning allegations that the companies violated several of the state’s air pollution and other environmental laws at their Attleboro manufacturing facility, located in a residential area adjacent to the Ten Mile River.

The Attleboro facility has long manufactured materials used to produce and enhance pharmaceuticals, health supplements, foods, and non-edible products, such as wall spackle, and has emitted volatile organic compounds (VOCs) to the ambient air. MassDEP began investigating after Mantrose submitted inconsistent reports about the facility’s solvent use. The complaint alleged that MassDEP found that the facility used outmoded equipment, including meters that could not accurately record solvent use, and that since 1998 the facility has annually emitted, at a minimum, two to three times more VOCs than the permit allowed. The complaint also alleged that MassDEP uncovered violations at the facility of water pollution, hazardous waste management, toxics use reduction, and oil and hazardous material release prevention laws and regulations.

The settlement required the companies to obtain a new air permit; limit facility air emissions; modify operations, manufacturing equipment, and record-keeping practices; and to otherwise bring the facility into compliance with the environmental laws. In addition, the companies agreed to pay \$2 million in civil penalties and \$300,000 toward two supplemental environmental projects that will benefit public health and the environment. The first SEP would pay \$150,000 to help fund the installation of auxiliary power units on Providence and Worcester Railroad diesel-powered locomotives, reducing locomotive idling and excess diesel-particulate emissions. The second SEP would send \$150,000 to the Attleboro Redevelopment Authority to help fund a riverbank-restoration project on the Ten Mile River as part of the downtown urban renewal plan.

This settlement is the second largest ever reached by the Attorney General’s Environmental Protection Division.